IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8215 OF 1988

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

BALVANTSINH PRATAPSINH
VERSUS
DISTRICT SUPERINTENDENT OF POLICE & ORS.

Appearance:
MR JP PARMAR for Petitioner
MR DA BAMBHANIA for Respondents

Coram: S.K. Keshote,J
Date of decision: 20/10/1997

C.A.V. JUDGMENT

#. The petitioner, an armed police constable in the

police department of the State of Gujarat, filed this petition under Article 226 of the Constitution of India and challenges the orders (i) of respondent No.1 dated 21st April 1986, under which he was ordered to be removed from services, (ii) of respondent No.3 dated 25th May 1987, dismissing the appeal against the aforesaid order and (iii) of respondent No.4 dated 25th October 1988, dismissing the revision application filed by the petitioner.

#. The petitioner has been ordered to be removed from services as the misconduct which has been alleged against him of remaining wilfully absent from duty was found proved. The learned counsel for the petitioner, challenging the validity of the orders impugned in this Special Civil Application, contended that it was not a case of wilful absence of petitioner from duty. He was prevented by a cause beyond his control to attend the duties and as such the authorities have wrongly taken it to be a case of wilful absence of the petitioner. It is further contended that the petitioner, firstly could not attend the service due to his illness and thereafter he remained absent as his wife fell ill. He came to resume his duty on 25th April 1985 but he was not allowed to join his duties and as such it could not have been taken it to be a case of his absence after 25th April 1985. Carrying this contention further, the learned counsel for the petitioner contended that in such matters, a pragmatic and real approach should have been taken and a person of the category to which the petitioner belongs should not have been severely dealt with. In the criminal case which has been filed against the petitioner for commission of offence under Section 145 of the Police Act, only fine of Rs.10/has been given whereas in the departmental inquiry, he has been ordered to be removed from the services.

#. In the civil application, the petitioner has given out further facts that a discriminatory treatment has been given to him in the matter of punishment. The persons similarly situated have been given lesser punishments. Further contention has been made that the before giving the penalty of removal, the petitioner was not given an opportunity of hearing. Last contention has been made that in the facts and circumstances of the present case, penalty of removal is a harsh punishment. Instead of penalty of removal, some minor punishment should have been given. In support of his contentions, the learned counsel for the petitioner placed reliance on some decisions of this Court as well as of the Hon'ble Supreme Court.

#. On the other hand, the learned counsel for the respondents contended that it is a case where the petitioner has not submitted an application for leave. The petitioner was constable in the police department wherein discipline is of utmost importance. Even if it is taken to be a case that the petitioner was ill or his wife was ill, he could have submitted an application and furnished relevant evidence in support of illness. In the absence of any application submitted by petitioner as well as any cogent and satisfactory evidence in support of his wife's and his own illness, the department has not committed any error in giving him the penalty of removal from services. That order has been affirmed by the appellate as well as revisional authority and as such this Court may not interfere in the matter. Absence from duty is a very serious and grave misconduct more so when the petitioner was deputed in a sensitive area duty. In the matter of punishment, it depends on the facts of each case and there is no question of any discrimination. The learned counsel for the respondent submitted that what punishment should be given for proved misconduct is prerogative of disciplinary authority or the appellate authority or at the most revisional authority and this Court may not interfere in the matter. Only in case where this Court finds the punishment to be wholly arbitrary, harsh and totally disproportionate to proved misconduct, and it shocks judicial conscience of the Court, this Court may interfere in the matter of quantum of punishment to be given to a delinquent employee. Replying to the authorities referred by the learned counsel for the petitioner, the learned counsel submitted that each case has to be decided on its own facts.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The absence of an employee from services, more particularly an employee of police department, without submitting any application as well as without any cogent and satisfactory cause of absence is certainly a serious misconduct. In the present case, the period of absence, of the petitioner, from duty can be divided in three parts. The first part of the absence is from 23rd March 1984 to 1st April 1985. The second part is from 2nd April 1985 to 24th April 1985 and the third part is from 25th April 1985 to 10th December 1985. The petitioner has admitted that in a criminal case which has been filed against him for the offence under Section 145 of the Bombay Police Act, he has confessed his guilt, i.e. of remaining wilfully absent from duty and on this

confession the judicial Magistrate has taken a lenient view and a penalty of fine of Rs.10/- has been given and in default of the payment thereof, he was ordered to undergo imprisonment for two days. From this fact, it comes out that the petitioner has admitted that he remained absent from duty. So far as the first spell of his absence is concerned, the petitioner has admittedly proceeded on leave without first submitting application and prior sanction of the same. Even if it is taken to be a case of sudden illness, I fail to see any justification in the action of the petitioner not to bring this fact to the notice of his superior officer. The illness of the petitioner was not of such serious nature where he had no time to inform his superior officer or he could not arrange to submit the application for leave and to get the same sanctioned by his officer. The petitioner has not disputed the fact that when he proceeded on leave, his duty was in a sensitive area. The petitioner belongs to Uttar Pradesh and he has gone there. When the petitioner was in a position to go to his native place, i.e. U.P., the only inference following therefrom is that he was in a position to submit an application for leave and get the same sanctioned. Looking to these facts it was obligatory on the part of the petitioner, if it would have been really a case of his illness, to first submit the application for leave and only when the leave is sanctioned, proceed on leave. The petitioner was a constable in police department and if he would have been really sick, the department would have itself taken care of him and he could have been sent for treatment. But the fact that he has not submitted the application and has straightaway ran to his native place gives out that it is a case where he has taken everything in his own hands and he exhibited total indiscipline and insubordination. From these facts it is clear that the petitioner has no respect for rule of law. The matter does not end here. Even after going to his native place in UP, the petitioner had not sent any application or any medical certificate intimating the department that he has been held up because of his illness. Annexure `A' is the certificate dated 1st April 1985 and that certificate has also not been sent or presented by the petitioner to the department till 25th April 1985. Why the petitioner, after reaching to his native place, did not send the leave application, remains unexplained. Not only this, after 1.4.85, why the petitioner has not sent the application and medical certificate again is also left unexplained by the petitioner. On 1st April 1985, the petitioner was not ill. He has been certified to be fit for resuming duty from 2.4.85. Still he has not resumed his duty and

remained absent upto 24th April 1985. The petitioner has given explanation that in the meanwhile his second wife fell ill. Even if it is taken to be true, I fail to see any justification in his conduct not to send any application for leave from UP. If we go by the certificate annexure `A' dated 1st April 1985, I have my own reservation whether this certificate could be relied upon or not. This certificate merely appears to be a certificate for the purpose of creating evidence of illness. This certificate would have attained more evidentiary value where the petitioner would have submitted the application for leave on the ground of illness or he would have sent the application for leave on the ground of illness. This certificate seems to be a document manufactured for the purpose of making out defence.

#. However, even if it is accepted, for the time being that the petitioner had justification to remain absent due to his own illness from 23rd March 1985 to 1st April 1985, still he has utterly failed to show any justification whatsoever for his absence from 2nd April 1985 to 24th April 1985. The petitioner had orally stated that his wife was ill during this period. This oral statement of the petitioner could not have been accepted and rightly it has not been accepted. The petitioner knew very well that in case somebody falls ill, and if it is taken to be a ground for absence, a medical certificate has to be obtained. The petitioner has not produced any medical certificate of illness of his wife. So for the period from 2nd April 1985 to 24th April 1985, neither the petitioner submitted any application nor any other cogent and material evidence in support of his case that he has been prevented to attend his duty due to illness of his second wife. This long absence in the circumstance is nothing but a wilful and deliberate absence of a police constable and it is a very serious misconduct. The petitioner has taken the matter very casually and lightly. He has shown scant disregard to his responsibility towards his duty which has been entrusted to him. He was serving the police department where discipline is of utmost importance but he has taken indiscipline to be the rule and in these circumstances, if the respondents have considered it to be fit case to remove him from services, the same cannot be said to be harsh or disproportionate punishment.

#. So far as the last period of absence is concerned, even if it is excluded then too the penalty of removal given to the petitioner cannot be said to be harsh or excessive. In the matter of punishment to be given on

proved misconduct, there cannot be any plea of discrimination. It depends on the facts of each case and the disciplinary authority has to consider each case on the basis of its own facts and the appropriate penalty has to be given to the delinquent employee. The petitioner has felt satisfied by referring the cases of some employees of police department where for their absence they have been penalized by a fine of Rs.10/- in criminal case but other wise, he has failed to produce on record, the relevant and material similarity in his case with the cases of those persons. The ground of discrimination in the matter of quantum of punishment sought to be raised by learned counsel for the petitioner is of no substance.

#. The last contention of the learned counsel for the petitioner that the penalty is harsh and disproportionate is also devoid of any substance. The petitioner remained wilfully absent for a long period and it has to be taken seriously. Remaining of deliberately and willfully absent from duty is a serious misconduct, more so where the delinquent employee is a police constable. What punishment has to be given for proved misconduct is certainly a prerogative of the disciplinary authority or appellate authority or departmental or revisional authority and in such matters, this Court has very very limited powers of judicial review. This Court, in the matter of quantum of punishment to be given to a delinquent employee for proved misconduct, can interfere only where it finds on the facts of the case that the punishment given to the delinquent employee is harsh and disproportionate to the guilt proved against him to the extent of shocking judicial conscience of this Court. I do not find the punishment given to the petitioner is harsh and disproportionate to the guilt proved. The judgments on which reliance has been placed by learned counsel for the petitioner are of little help to the petitioner in this case. In the matter of dismissal or removal, certainly a plea can be raised that it may be a economical death of the delinquent employee, but at the same time, the Court may not be oblivious of the fact that for serious misconduct, major penalties of dismissal, removal and termination are being provided. If this is the only consideration, then in all the cases irrespective of what misconduct has been committed by the delinquent employee or the officer, if the penalty is removal or dismissal is substituted by reinstatement, then as a consequence thereof, the disciplinary rules to the extent where they provide penalty of dismissal, termination or removal, will be rendered nugatory. The Apex Court, in the case of State Bank of India v.

Samarendra Kishore Endow & Anr., reported in JT 1994(1) SCC 217 as well as in the case of B.C.Chaturvedi v. Union of India, reported in JT 1995(8) SC 65, has held that in the matter of quantum of punishment to be given to a delinquent employee or the officer for proved misconduct, this Court has very limited power of judicial review. Each case has to be decided on the basis of its own facts and as stated earlier, the facts of the present case are certainly glaring. The petitioner is a person who remained absent without there being any justification for the same. The authorities below have not committed any error, much less an error apparent on the face of their orders which call for interference of this Court, sitting under Article 226 of the Constitution of India.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sunil)